

## **REMARKS**

### **Status of the Claims**

Claims 1-6, 9-11, 17 and 51-70 are pending.

Claims 7-8, 12-16 and 18-50 were previously cancelled.

Claims 1-6, 9-11, 17 and 51-70 were rejected.

Claims 1, 51, 63 and 68 are independent claims.

### **Rejections Under 35 U.S.C. § 103(a)**

Claims 1-16, 9-11, 17, and 51-70 are anticipated under 35 U.S.C. 103(a) as being unpatentable over Aoki (U.S. Patent No. 5,509,353) in combination with Gasparrini et al. (U.S. Patent No. 5,368,157) and Knaul et al. (U.S. Patent No. 4,680,883). Claims 1-6, 17, and 51-70 are anticipated under 35 U.S.C. 103(a) as being unpatentable over Marass (German Patent No. 37 36 397) in combination with Gasparrini et al. (U.S. Patent No. 5,368,157).

### **Response to Rejections Under 35 U.S.C. § 103(a)**

The applicants respectfully traverse the rejections.

Both rejections under 35 U.S.C. 103(a) utilize Gasparrini et al. (U.S. Patent No. 5,368,157). Gasparrini'157 issued to C. Robert Gasparrini and Walter H. Cano, November 29, 1994, and is entitled "Pre-Package, Pre-Soaked Cleaning System And Method For Making The Same."

Gasparrini'157 is published less than one year prior to the present application and thus does not qualify as prior art under 35 U.S.C. 102(b). Applicant states that Gasparrini'157 and the present application were subject to an obligation of common assignment at the time the invention was made and thus, Gasparrini'157 would be disqualified as prior art under 35 U.S.C. 102(e), (f), or (g) if applied in a rejection under 35 U.S.C. 103(a). See MPEP 706.02(a). Accordingly, Gasparrini'157 is believed to be asserted by the USPTO as qualifying as prior art under 35 U.S.C. 102(a).

However, Applicant's disclosure of his own work within the year before the application filing data can not be used against him under 35 U.S.C. 102(a). A rejection based on 35 U.S.C. 102(a) can be overcome by filing an affidavit or declaration under 37 C.F.R. 1.132 showing that the reference invention is not by "another." See M.P.E.P. 706.02(b). Applicant can rebut a *prima facie* case by showing the reference's disclosure was derived from applicant's own work. A

publication may be removed as a reference by the filing of an affidavit establishing that the relevant portions of the publication originated with, or were obtained from, the applicant. The rejection can also be overcome by the submission of a specific declaration by the applicant establishing that the article is describing applicant's own work. See MPEP 2132.01, and *Ex parte Kroger*, 219 USPQ 370 (Bd. Pat. App. & Inter. 1982). Further, unless it is a statutory bar, a rejection based on a publication may be overcome by showing that it was published by applicant himself or on his behalf. See MPEP 715.01(c)

Therefore, Gasparrini'157 is not applicable as a prior art reference with entry of this response and the declarations under 37 C.F.R. 1.132 by applicants C. Robert Gasparrini and Walter H. Cano. See MPEP 715.01(b). In those declarations, Mr. Gasparrini and Mr. Cano declare that the portion of the Gasparrini'157 patent publication and relied on in the rejection originates from the work on Mr. Gasparrini and Mr. Cano and Mr. Anselmo; that is, Mr. Gasparrini and Mr. Cano declare that the subject matter relied upon in the reference was applicant's own work. See MPEP 715.01(b)-(c). Accordingly, the Gasparrini'157 reference no longer qualifies as prior art to the present application.

With respect to the remaining assertions of the rejections under 35 U.S.C. 103(a), to establish a *prima facie* case of obviousness, all claim limitations must be taught or suggested by the prior art. With the removal of Gasparrini'157 as a prior art reference, the remaining cited references (Aoki and Knaul et al in one instance, Marass in another) fail to teach, suggest or disclose, as acknowledged by the USPTO, all elements of the claimed invention. Applicants therefore respectfully submit that a *prima facie* case of obviousness is not presented and request withdrawal of these rejections and allowance of all claims.

### **CONCLUSION**

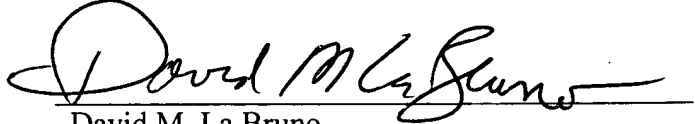
Based on the foregoing remarks, it is respectfully submitted that the claims as currently pending are patentable and in condition for allowance. Reconsideration of the application and withdrawal of all rejections are respectfully requested. In the event that a telephone conference would facilitate examination in any way, the Examiner is invited to contact the undersigned representative at the number provided.

**AUTHORIZATION**

The Commissioner is hereby authorized to charge any additional fees which may be required for the timely consideration of this amendment under 37 C.F.R. §§ 1.16 and 1.17, or credit any overpayment to Deposit Account No. 13.4500, Order No. 0140-4126US5.

Respectfully submitted,  
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